

Montana Senate Bill 183 - 2009
Summary and explanationExhibit No. 10Date 3-17-09Bill No. SB183

Summary

Here's generally what SB 183 will accomplish, if passed:

- 1) Declare Montana authority for wildlife management and challenge federal authority to force wolves on Montana;
- 2) Remove Montana from cooperation with the feds by voiding the cooperative management agreement between Montana and the feds and voiding the fed-driven Montana Wolf Management Plan;
- 3) Declare that federal wolves are not in compliance with Montana wolf policy;
- 4) Establish benchmarks that the feds must meet to bring federal wolves into compliance with Montana wolf policy; and
- 5) Establish consequences for any period that federal wolves are not in compliance with Montana wolf policy.

Explanation - section by section

Preamble/Whereas: These set the stage for the conditions of the bill.

Section 1. Title. Establishes the bill title as the "Montana Wolf Recovery Act."

Section 2. Legislative findings. These findings are important to provide authorities that will be used if/when SB 183 is passed and any part of it gets into court. The findings challenge federal authority to foist wolves on Montana based on the constitutional power of Congress "To regulate commerce with foreign nations, and among the several states ..." These findings also assert restrictions on federal power under the 9th and 10th Amendments to the U.S. Constitution, and the findings claim contract rights under Montana's contract for statehood found at Article I of the Montana Constitution.

Section 3. Purpose. This section details what Montana hopes to achieve with SB 183. This may be important if SB 183 is passed and any of the provisions are ever questioned in court and the court needs guidance about the intent of the Legislature. This declares that the Legislature wishes to protect our game herds, hunting opportunities, livestock, and to preserve safety for people outdoors in Montana.

Section 4. Authorities asserted and challenged. This is much like Section 2, but more formally claiming 9th and 10th Amendment rights for Montana, rights under Montana's contract for statehood, and challenging congressional "commerce clause" authority over wildlife in Montana.

Section 5. Montana wolf conservation and management plan -- void. The current wolf management plan was driven entirely by what the federal government required of Montana, not by what Montana wants. Basically, Montana was forced to agree, for this management plan to be accepted by the feds, to manage wolves if delisted as the federal managers would manage them if not delisted. The federally-coerced wolf management plan is vacated by this section.

Section 6. Cooperative wolf management agreement -- void. Same rationale as Section 5. The federally-coerced, federally-driven agreement is vacated. Montana has been forced at gunpoint to play with a stacked deck. New deck, new deal.

Section 7. Future cooperative agreement -- certification of compliance. This section begins to get into the meat of SB 183. It says that no agency of Montana may enter into a wolf management agreement with the feds as long as wolves are not in compliance with Montana wolf policy. Section 7 also sets a process whereby certain public officials in Montana must sign off on wolf compliance with Montana wolf policy before federal wolves are actually considered in compliance. It also sets a process for once-compliant wolves to again be declared non-compliant (triggering consequences later in SB 183) if wolves fall out of compliance with Montana wolf policy.

Section 8. Future cooperative agreement and management plan -- conditions. This Section establishes some minimum conditions which must be met for federal wolves to become compliant with Montana wolf policy. The items in this list are self-explanatory.

Section 9. Wolves unprotected until compliance. Wolves are not protected under state law, on state or private land, as long as they are not in compliance with Montana wolf policy. We've made this section specific to state and private land to be consistent with later sections of the bill, and because such a declaration may be more difficult to effect on federal lands.

Section 10. Wolf management policy -- compliance criteria. These are objective conditions that must be met for wolves to become compliant with, and maintain compliance with, Montana wolf policy. Wolves must be effectively delisted by the feds, and wolf numbers must be limited to near those originally promised upon wolf introduction and listing. If wolves are delisted by federal agencies and that delisting is vacated by courts, then wolves would no longer be in compliance. Wolf impact on big game hunting opportunities must be limited and quantified - same with impact on livestock production. And, wolves must not be spreading or harboring infectious diseases in Montana.

Section 11. Citation or arrest for wolf taking prohibited during noncompliance. This is one of several consequences that would be in effect for any period that wolves are not in compliance with Montana wolf policy. Section 11 would make it a misdemeanor crime for "any person" to issue a citation to or arrest a person for "taking" (killing) a wolf on state or private property in Montana. States control their criminal codes - decide what is

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legal and illegal. If a Montana Highway Patrolman cites somebody for going 100 MPH on a Montana highway, it is no defense for that person that he or she is a federal employee. The same is true with murder, rape, robbery or poaching. A person violating Section 11 may also be prosecuted for the felony crime of "Intimidation" or "Official Misconduct."

Section 12. State to provide defense. Another consequence that evolves out of non-compliance with Montana wolf policy. If a person is accused of illegally "taking" a wolf on state or private land at any time that wolves are noncompliant, the State of Montana will cover the legal defense costs for the accused person.

Section 13. Use of state resources. More consequences of noncompliance. State money may not be spent to in any way foster ("manage") wolves as long as wolves are noncompliant. The Montana Department of Fish, Wildlife and Parks (FWP) may spend state money for wolf control, and federal money for wolf control, but FWP must admit any such expenditure in detail by posting in a public place (probably FWP's Website).

Section 14. Role of legislative auditor. This section is very important. There are many numbers bandied about in the wolf debate. Some are verifiable, but many are not. All are illusive, some are illusory. There is only one entity in Montana trusted by all to be honest and as accurate as possible with numbers - the Legislative Auditor and her staff. So, the Legislative Auditor is invoked here to vet any numbers upon which compliance with Montana wolf policy is based.

Section 15. Duty of attorney general. Another consequence of non-compliance. Section 15 is about restitution to Montana for the damage caused by wolves, ever since the first broken promise by the feds to delist wolves and turn them over to state management. That is, the period for which Montana will seek restitution for primarily lost game and lost livestock (but includes other damages as well) starts with the first broken federal promise to delist wolves and continues until wolves are brought into compliance with Montana wolf policy. The U.S. Court of Federal Claims is an entirely different judicial system than the usual federal courts, and is the proper place to lodge damage claims against the federal government. It is a system much less subject to political bias than the usual federal courts. If the Attorney General fails to file the requested claim, other entities are authorized by section 15 to file such claim and be reimbursed quarterly for legal work done.

Section 16. Injury or death of a human -- liability. More consequences. Wolf advocates have long claimed that wolves are shy creatures and will never attack people. Fine. But if we've been lied to, or if the "peaceful wolf" claims turn out to be untrue, those who have propagated false or misleading information may be held personally accountable for their flawed assurances or information. They're on the record. Let them be accountable and held to account. If wolves turn out to be dangerous to people, those individuals who have been responsible for blocking the safety of proper wolf management may be liable for damages to those who suffer.

Section 17. Injury or death of a human -- lethal action authorized. Yet more consequences. Since there is a long and verified history of rabies-infected wolves attacking people, and since non-rabid wolves are said to be such shy creatures, Section 17 presumes that any wolf attacking a person is infected with rabies. The only sure way to prevent a rabies epidemic is a quick cauterization of the infected population. If an (assumed) rabid wolf attacks a person, Section 17 allows any person to kill any wolf, using any means, within 100 miles of the rabid wolf incident. County commissioners of the county where the incident occurs are authorized to make the determination that a rabies incident has been adequately cauterized. County commissioners may draw on any information or expertise they wish to make the determination to end the cauterization. For any wolves killed pursuant to Section 17, the State Veterinarian must be notified so the wolves can be tested for rabies.

Sections 18 through 22. These are all amendments to current law necessary to return wolves to an unprotected status under Montana law. These changes will be in effect any time wolves are not in compliance with Montana wolf policy. There are reversion clauses later in SB 183 to bring these laws back into effect at any time that wolves are in compliance with Montana wolf policy.

Section 23. Delisting of gray wolf -- management. This Section authorizes FWP to manage wolves any time they are delisted by the feds. Delisting is one condition of compliance with Montana wolf policy.

Section 25. Repealer. This Section repeals a current law, the short title of which is, "Process for delisting of gray wolf -- management following delisting."

Section 26. Codification instruction. Defines where in the Montana Codes Annotated to put the new laws created by SB 183.

Section 27. Effective dates -- contingency. Specifies that SB 183 becomes effective immediately upon passage and approval, except that the reversion clauses only become effective under the terms elsewhere in SB 183.

Section 28. Contingent termination -- contingent suspension. This is the "reversion" section that causes existing wolf laws to go back into effect whenever wolves are in compliance with Montana wolf policy.

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